

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 141 of 2005(P)

OS.32/2000 of SUB COURT, VADAKARA

.....

PETITIONER:

LAKSHMIKUTTY AMMA, VENGOLIKANDIYIL,
KUTTIPURAM AMSOM, NARIKKATTERI DESOM,
VADAKARA.

BY ADV. SRI.P.A.AUGUSTINE(AREEKATTEL)

RESPONDENTS:

1. M.K.BALAKRISHNAN NAIR, MOOTUR VEEDU,
KOTTUTHARA AMSOM, DESOM, VYTHIRI TALUK,
WYNAD DISTRICT.
2. BHASKARAN NAIR, MOOTUR VEEDU,
KOTTUTHARA AMSOM, DESOM, VYTHIRI TALUK,
WYNAD DISTRICT.
3. SUNIL KUMAR, MOOTUR VEEDU,
KOTTUTHARA AMSOM, DESOM, VYTHIRI TALUK,
WYNAD DISTRICT.
4. NARAYANI AMMA, MOOTUR VEEDU,
KOTTUTHARA AMSOM, DESOM, VYTHIRI TALUK,
WYNAD DISTRICT.
5. N.SHAILAJA DEVI BAMSURI VEEDU,
SANTHIGRAM P.O., MANJERI, MONGRAM,
MALAPPURAM.
6. M.SUGATHA KUMARI, VENKITASWARA VEEDU,
AMBUKATHI P.O., MANANTHAVADY, WYNAD.

WPC : 141 OF 2005

7. SUNITHA KUMARI, AATHIRA VEEDU,
ARIMBRA ROAD, MORAYUR P.O., MONGAM,
MALAPPURAM DISTRICT.

8. M.SURESH KUMAR, DEVELOPMENT OFFICER,
LIC, LOVE DALE, KONDOTTY, MALAPPURAM DISTRICT.

BY ADV. SRI.P.T.MOHANKUMAR
SMT.ARLISS TRENCY ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 141 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER
IN FDIA 957/03 IN OS 32/00 OF THE SUB COURT, VADAKARA.

EXT.P2 : TRUE COPY OF THE ORDER DT.08.11.04 IN IA 890/04 IN FDIA IN OS 32/00
OF THE SUB COURT, VADAKARA.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 141 OF 2005

Dated this the 13th day of August, 2007

JUDGMENT

The grievance of the petitioner who is the first defendant in a suit for partition and who has been allotted plot 'I' by the commissioner who was appointed in the final decree proceedings is that, though the only available residential house has been allotted to her and she is the only party who is in residential occupation of any portion of the plaint schedule property, the learned Sub Judge has not allowed her application for remitting the commissioner's report under which no proper way has been provided for accessing the house allotted to her by vehicles.

2. Heard the submissions of Sri.P.A.Augustine, learned counsel for the petitioner and Sri.P.T.Mohankumar, learned counsel for the contesting respondents. Copy of the commissioner's report and plan were also shown to me. In fact, Ext.P1 is copy of the plan. Counsel for the petitioner submitted that under Ext.P1, Plot A & B having direct frontage of motorable roads have been allotted to sharers other than the petitioner. According to the learned counsel, when the only residential

house which is the Tharavadu is being allotted to the petitioner, the learned Sub Judge should have ensured that motorable road is provided for accessing the house. The same is possible by making some minor adjustments/reallocations in the allotment presently recommended by the advocate commissioner.

3. Learned counsel for the respondent submits that SA No.458 of 2005 has been filed by the petitioner himself against the preliminary decree. Counsel requested that the issue involved in this Writ Petition be relegated to the Second Appeal. But, as rightly submitted by the learned counsel for the petitioner, the issue in the Second Appeal is only as to whether the petitioner should be made accountable for the value of the house. The present question whether plot 'I' should be provided with a motorable road does not arise at all in the Second Appeal.

Having considered the rival submissions and having gone through the impugned order, I am of the view that the grievance of the petitioner ought to be considered by the learned Sub Judge once again. Therefore, I set aside the impugned order and direct the learned Sub Judge to pass fresh orders on the IA filed by the petitioner, after hearing both sides. It is open to the petitioner to urge all the grounds urged before me, before the learned Sub Judge. The learned Sub Judge while

passing fresh orders will consider the grounds and state as to why it is not desirable or possible to allow motorable road access to 'I' plot. Fresh orders as directed above should be passed by the learned Sub Judge at the earliest.

PIUS C. KURIAKOSE, JUDGE

btt

